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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	GN Docket No. 93-252
Implementation of Section 3(n) and 332 of the Communications Act	)	

To: The Commission

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.[1] Pursuant to the Omnibus Budget Reconciliation Act of 1993,[2] the Notice proposes revisions to the Commission's Rules to create a new comprehensive framework for all mobile services. As detailed below, Century believes the public would best be served by rules that ensure regulatory parity through equal treatment of mobile service providers competing in the same product markets and that minimize regulatory requirements on commercial mobile service licensees.

I. INTRODUCTION

As an operator of numerous cellular systems throughout the country, Century has become increasingly aware of the

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[1] Implementation of Sections 3(n) and 332 of the Communications Act, FCC 93-454 (released Oct. 8, 1993) (Notice of Proposed Rulemaking) [hereinafter "Notice"].

[2] Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

imperfections in the current regulatory scheme for promoting full and fair competition among competing mobile service providers. As both Congress and the FCC have recognized, the advent of competitors that operate under different regulatory regimes can have the effect of restricting competition and the benefits it can bring to consumers. Additionally, they have observed that certain Title II requirements -- such as tariff obligations -- impose substantial and unwarranted burdens on mobile service providers and their customers. As Congress' amendments to Section 332 of the Communications Act acknowledge, a fully thriving mobile services market requires a regulatory framework that is applied consistently, minimizes regulatory burdens, and enhances certainty.

In order to achieve these Congressional goals and best serve the public interest, the rules adopted in this proceeding should ensure the following: First, comparable, competitive mobile service providers (such as those offering cellular, personal communications services ("PCS"), and enhanced specialized mobile radio service ("ESMRS")) should be governed by the same regulatory rights and obligations. Second, commercial mobile service providers should be exempted from Title II requirements to the maximum extent allowed by Congress. Finally, state regulation of mobile services should be minimal and equal among competing services. The adoption of rules consistent with these

guidelines would ensure that the public enjoys the full benefits of competition in the mobile services marketplace.

II. REGULATORY CLASSIFICATION OF CELLULAR, PCS AND COMPARABLE SERVICES

The Budget Act's amendments to Section 332 provide for the classification of mobile services as either commercial mobile services or private mobile services. Within the commercial mobile services classification, the Notice proposes to establish separate classes of services among which the extent and type of regulation could vary. While in certain cases such differential regulation may be appropriate, Century urges the Commission to ensure that all commercial mobile services that compete in the same product markets are regulated consistently.

In particular, cellular, PCS and ESMRS providers should enjoy the same rights and bear the same burdens for regulatory purposes. All of these services are functionally similar, offering two-way wireless communications to the general public by means of a series of interconnected base stations. Cellular and PCS are clearly comparable inasmuch as the rules governing PCS operations were written to ensure comparability with cellular.[3] Similarly, ESMRS licensees are

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[3] See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 93-451 at ¶¶ 31, 130, 153 (released Oct. 22, 1993) (Second Report and Order).

recognized to be fully competitive with cellular.[4] As such, no basis exists for disparate regulation of these services. Indeed, subjecting these services to different regulatory requirements could place some licensees at a competitive disadvantage, thus unduly limiting competition and its benefits to consumers.

Accordingly, Century urges the Commission to modify its proposals to ensure that these competitive services are governed by the same regulatory rights and obligations. For the reasons cited above, the Notice's proposal to separately classify cellular and PCS[5] would not serve the public interest. The Notice also expressly proposes affording PCS licensees the right to self-designate their status and invites comment on extending flexibility to offer both commercial and private services within their PCS spectrum.[6] Clearly, regulatory parity requires that any such flexibility extended to PCS must also be extended to competing cellular carriers.[7] Similarly, if PCS providers are permitted to

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[4] See, e.g., E. Andrews, Radio Dispatchers Set to Rival Cellular Phones, N.Y. Times, Nov. 5, 1993, at D4; Mobile Radio Firms Take on Cellular Market, L.A. Times, Oct. 26, 1993; J. Mulqueen, SMR Nets Are Going Digital, Communications Week, Sept. 27, 1993.

[5] Notice at ¶ 55.

[6] Id. at ¶¶ 46-48.

[7] The public benefits of extending such flexibility to cellular carriers are already well-documented in a pending (continued...)

provide dispatch services, cellular carriers should also be afforded that flexibility.

III. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICE LICENSEES

The Budget Act grants the Commission discretion to exempt some or all commercial mobile service providers from the requirements of Title II of the Communications Act, with the exception of Sections 201, 202 and 208. The Notice accordingly seeks comment on the extent to which Title II regulations should be forborne. Century submits that the public would best be served by exempting commercial mobile service licensees from Title II regulations to the maximum extent permitted.

As recognized in the Notice, Title II regulation was first imposed when the only providers of telecommunications services were monopolies. These provisions were designed to protect consumers from unfair market practices because the market could not discipline itself through competition. In contrast, as the Commission has previously noted, the mobile

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[7](...continued)
petition filed by Telocator and the comments filed in response thereto. See Telocator, Petition for Rulemaking to Amend the Commission's Rules to Authorize Cellular Carriers to Offer Auxiliary and Non-Common Carrier Services, RM-7823 (filed Sept. 4, 1991).

services marketplace is highly competitive.[8] The introduction of PCS will further increase the amount of competition in this market. As such, Title II regulation of mobile services would appear to be unnecessary.

In addition to being unwarranted, Title II obligations can impose a substantial burden on mobile services licensees. Compliance with tariff and other reporting requirements can exhaust significant corporate resources that could better be employed improving the quality of service to customers. Moreover, Title II's tariff obligations in particular can hinder a carrier's ability to respond quickly to competition to offer rates and service packages that benefit consumers. Clearly, imposing such onerous, unnecessary requirements on mobile services providers does not serve the public interest.

Accordingly, the Commission should fully exercise its new forbearance authority. As the Notice correctly concludes, tariff regulation of mobile services is no longer required because of competitive market conditions.[9] For similar reasons, the Commission is correct that it should also forbear from applying provisions governing the related business operations of commercial mobile services providers and their relationships with the FCC and each other.

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[8] See, e.g., Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676, 5712 (1993) (Notice of Proposed Rulemaking)

[9] Notice at ¶¶ 62-63.

Further, because of the general absence of consumer complaints, the additional provisions about which the Commission has called for comment also appear unnecessary.

IV. INTERCONNECTION POLICIES

The new Section 332 amendments require the Commission to order a common carrier to interconnect with a commercial mobile service provider upon reasonable request. Accordingly, the Notice seeks comment on the interconnection rights that should be afforded to commercial mobile service providers. Century urges the Commission to ensure that commercial mobile service providers have the same interconnection rights as afforded to cellular licensees under existing rights and policies. As discussed above, there is no basis for disparate regulation of competing services. With respect to the interconnection obligations of cellular and other commercial mobile service providers, there is no need to require these licensees to provide interconnection to other mobile service providers at this point in time.[10]

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[10] Similarly, this is not the appropriate vehicle for exploring the applicability of equal access obligations to cellular and other mobile service providers. There currently is pending at the Commission a separate proceeding focusing on this issue. See MCI Telecommunications Corporation, Petition for Rulemaking for Policies and Rules Pertaining to Equal Access Obligations of Cellular Licensees, RM-8012 (filed June 2, 1992). If such obligations are imposed upon

(continued...)

V. STANDARDS FOR REVIEWING STATE PETITIONS FOR EXTENSION OF REGULATION

Congress' recent amendments to the Communications Act preempt state and local rate and entry regulation of all commercial mobile services. The legislation does provide, however, that upon proper showing to the Commission a state may extend existing rate regulation or initiate new restrictions. For the same reasons that Century believes regulation at the federal level should be minimized, it also urges the Commission to ensure that state regulation is minimal as well as equal among competing service providers. Additional state regulation should only be imposed where the state can demonstrate that it is necessary to ensure a competitive market and prevent consumer abuse in a particular area. To ensure competition is not unduly restricted, such regulation should be narrowly focused to achieve this objective. The legislation and accompanying history support relaxed regulation where competition exists.

VI. CONCLUSION

For the foregoing reasons, Century urges the Commission to adopt rules that ensure regulatory parity among competing

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[10](...continued)
cellular carriers, however, regulatory parity demands they also apply to the full range of wireless services.

mobile service providers and that minimize regulatory requirements on commercial mobile service licensees.

Respectfully submitted,

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